IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

CRP.No. 443 of 2003()

AGAINST THE ORDER DT. 17.7.02 IN OS.505/1995 of SUB COURT, MAVELIKKARA

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REVN. PETITIONER: PLAINTIFF

ALEX C.MATHEW, AGED 46 YEARS,
THENGUMTHARAYIL, MANKAMKUZHI P.O.,
MAVELIKKARA, ALAPPUZHA, KERALA.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENTS: DEFENDANT

M/S.CHIRAG SANITARY PRODUCTS,
B-12/15, JHILMIL INDUSTRIAL AREA, G.T.ROAD,
SHAHDA, DELHI-110 095.

BY ADV. SRI.R.LAKSHMI NARAYAN (CAVEATOR)
SRI.RASHEED C.NOORANAD
SRI.G.GOPAKUMAR (CHERTHALA)
SRI.S.K.MOHAMED SAJEER

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 443 OF 2003

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Dated this the 19th day of June, 2007.

O R D E R

This revision is preferred against the order of the learned Sub Judge, Mavelikkara on a preliminary issue regarding the territorial jurisdiction of the court to entertain the suit. The suit is one for realisation of the amount due from the defendant and it is submitted that the cause of action for the suit arise on 26.8.91 and on 9.11.94 the date on which the last order was taken at Mavelikkara, the area of portion of the plaintiff which is within the jurisdiction of the Subordinate Judge's Court, Mavelikkara. This was resisted by the defendant contending that as per the terms of the agreement the Courts in Delhi only has jurisdiction to try the case and therefore the plaint is to be returned for proper presentation.

2. After hearing both sides the trial court held that since the Courts at Mavelikkara and Delhi are having jurisdiction and as per clause 15 of the agreement the jurisdiction is restricted only to Delhi court, court at

Mavelikkara does not have jurisdiction and therefore ordered return of plaint. It is against that order the present revision is filed.

3. The learned counsel Sri. Babu submitted that this is a case where there is a waiver and acquiescence and so on that question alone the jurisdiction has to be found and the Mavelikkara court should not have returned the plaint. In support of his argument he had cited a decision of the Division Bench of this Court reported in **Muhammed Ismayil v. Malabar Engineering Company (2005 (3) KLT 695)**. It was held in that case that objection regarding the territorial jurisdiction of a court shall be made at the earliest opportunity. A petition raised just before the trial cannot be justified. A reference to paragraph 7 of the case would reveal, in that particular case, the defendant entered appearance and filed a written statement challenging the jurisdiction but at the same time filed a counter claim and thereafter moved for issuance of a Commission and when the matter was about to be listed for trial an application was filed

challenging the jurisdiction. The Court found that it is not the proper stage and such conduct would result in waiver of the objection. It also relied upon the decision of the Supreme Court in **Bahrein Petroleum Co. v. P.J. Pappu (AIR 1966 SC 634)** which held that long and continued participation by the defendant in the proceedings without any protest may, in an appropriate case, amount to waiver of the objection. In the case on hand also I find that though the defendant raised a contention regarding the jurisdictional aspect it filed a counter claim before court and participated and only at the fag end when the trial was about to commence invoked jurisdictional question. So the facts of the case referred to in the decision and the facts of the case on hand appears almost similar and therefore by conduct of the party it has to be held that the objection has been waived by the defendant in the case.

4. So far as the other points are concerned when it is a settled position of law that when two courts are having jurisdiction and the parties by agreement had decided to

confer further jurisdiction on one court it may be correct and that court alone can entertain a suit. Here, it is admitted that cause of action had arisen partly at Mavelikkara and that the defendant is residing in Delhi, so both the courts have jurisdiction. But as held by me earlier since the question of waiver has been considered and found in favour of the plaintiff the order passed by the learned Subordinate Judge requires interference and therefore it is liable to be set aside.

In the result, CRP is allowed and the order under challenge is set aside. The Sub Judge, Mavelikkara is directed to take back the file and try the case in accordance with law after affording opportunity to both the sides.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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O R D E R

19th June, 2007.